discloses the existence of a contract concerning this land, whereas these services might well have been rendered for a pecuniary compensation. And in American jurisdictions which have adopted the English theory, it has been declared that constructive possession will not be sufficient evidence of such a contract. *Miller* v. *Lorentz*, 39 W. Va. 160. But the weight of American authority favors a recovery in these cases, provided the services rendered were such that they could not be adequately compensated by money. *Rhodes* v. *Rhodes*, 3 Sandf. Ch. (N. Y.) 279. This is more readily recognized where a recovery for the services would be barred by the Statute of Limitations. *Warren* v. *Warren*, 105 Ill. 568. But see *Terry* v. *Craft*, 87 S. W. 844 (Tex.). It is inequitable to allow the plaintiff, who has acted on the defendant's assurances, to be placed in such a position that the damages he would recover at law would not put him *in statu quo*. The services in the principal case probably fall within this rule.

TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO ADDRESSEE — LIABILITY FOR DELAY OR NON-DELIVERY. — The plaintiff wrote to W. soliciting a loan of money to be used in avoiding a sacrifice sale of certain property, and urging an answer by telegraph. W. wired at once, "will mail you draft to-day"; but the delivery to the plaintiff was negligently delayed several days. The plaintiff consequently sold her property at a sacrifice and then sued the telegraph company in tort. *Held*, that the plaintiff can recover. *Western Union Telegraph Co.* v. *Lawson*, 182 Fed. 369 (C. C. A., Ninth Circ.).

It is hard to determine what right, if any, of the sendee's has been infringed in cases of negligent delay. In England a sendee has no action unless the sender was his agent, or the altered message an intentional fraudulent representation by the company. *Dickson* v. *Reuter's Tel. Co.*, 3 C. P. D. 1, 6; *Playford* v. *United Kingdom Electric Tel. Co.*, L. R. 4 Q. B. 706. American courts advance four grounds for allowing the sendee to sue. (1) The sendee has a property in the message and should recover for its wrongful detention, like a consignee of goods. See *Young* v. *Western Union Tel. Co.*, 107 N. C. 370, 372. This view has not met with approval. See *Western Union Tel. Co.* v. *Allen*, 66 Miss. 549, 556. (2) The sendee is treated as principal and the sender as his agent in sending the telegram. *Milliken* v. *Western Union Tel. Co.*, 110 N. Y. 403. See *Butner* v. *Western Union Tel. Co.*, 2 Okl. 234. This would provide only for cases of actual agency. (3) The sendee is treated as beneficiary of the sender's contract. *Frazier* v. *Western Union Tel. Co.*, 45 Or. 414, 417, 418; *Western Union Tel. Co.* v. *Adams*, 75 Tex. 531, 536. This would not cover most cases without a straining of the facts. (4) The telegraph company is a public agency and responsible alike on its public undertaking to sender and sendee, the duty arising with acceptance of the telegram. *Western Union Tel. Co.* v. *Allen*, 66 Miss. 549; *New York & Washington Printing Tel. Co.* v. *Dryburg*, 35 Pa. St. 298. But see 17 HARV. L. REV. 365. Theoretically the English courts have reached the right result. If the sendee is to have a right to sue it should come from the legislature. *Herron* v. *Western Union Tel. Co.*, 90 Ia. 129; *Wadsworth* v. *Western Union Tel. Co.*, 86 Tenn. 695, 707.

TITLE, OWNERSHIP, AND POSSESSION — WHAT POSSESSION IS NECESSARY TO MAINTAIN ACTION OF FORCIBLE ENTRY AND DETAINER. — The plaintiff occupied premises owned by the defendant under a lease expiring November 1. On September 3 the defendant forcibly ejected the plaintiff's watchman. In an action of forcible entry and detainer, the defendant offered evidence tending to prove that the plaintiff had made a parol surrender of the lease in August, and that the defendant had taken possession. *Held*, that the evidence is admissible. *Schwinn* v. *Perkins*, 78 Atl. 19 (N. J., Ct. Err. & App.).

If the defendant offered this evidence to show that he had the right to im-

mediate possession, it should not have been admitted. The statute is designed to prevent any interference with the peaceable possession of land which would tend to a breach of the peace, and, given a forcible entry, the plaintiff need only establish the fact of his actual peaceable possession. *Craig* v. *Donnelly*, 28 Mo. App. 342. A trespasser may maintain the action if he has possession; though courts differ as to just when the mere occupancy of a trespasser ripens into possession. *Cain* v. *Flood*, 14 N. Y. Supp. 776; *Hodgkins* v. *Price*, 132 Mass. 196. In the principal case, however, the plaintiff had remained in possession after the expiration of his term. The defendant's evidence at best would only show that the plaintiff was not in exclusive possession; and having regard to the intent of the statute, the actual, peaceable possession of the plaintiff, though not exclusive and without right, would seem to be sufficient to require the defendant to enforce his superior right by the aid of the courts rather than by self-help. But see *Sitton* v. *Sapp*, 62 Mo. App. 197. If this is so, the evidence was irrelevant, and should not have been admitted.

TORTS — APPLICATION OF RULE OF FLETCHER *v.* RYLANDS. — The defendant's milldam broke, and the resulting flood destroyed a portion of the plaintiff's dam below. *Held*, that the plaintiff cannot recover without showing negligence on the part of the defendant. *City Water Power Co.* v. *City of Fergus Falls*, 128 N. W. 817 (Minn.).

The court admits that the doctrine of *Fletcher* v. *Rylands* is still law in Minnesota, but refuses to apply it here on the ground that milldams are not a non-natural user of land, but are highly beneficial, and are encouraged by statutes. Logically there is no reason for not applying the doctrine. To be sure the defendant has not brought the water upon his land in the first instance, but he has retained and collected it there for his own purposes, and it is likely to do mischief if it escapes. The English courts have applied the doctrine to just such a case. *Nichols* v. *Marsland*, 2 Ex. D. 1. The grounds given for exception practically allow the courts to throw an insurer's liability on a landowner or not according as their ideas of policy and common sense may dictate. The result reached in this particular case is undoubtedly the fair one. *Peters* v. *Devinney*, 6 U. C. C. P. 389; *Livingston* v. *Adams*, 8 Cow. (N. Y.) 175; *Inhabitants of Shrewsbury* v. *Smith*, 12 Cush. (Mass.) 177. It might better have been attained more directly.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — WHETHER DAMAGE TO CONTRACT RIGHT BY NEGLIGENT ACT OF THIRD PARTY IS ACTIONABLE TORT. — The plaintiff's tug was towing a ship from one port to another under a contract. The defendant's vessel negligently collided with and sank the tow. The tug was uninjured. The plaintiff sued the defendant to recover the amount of towage remuneration so lost. *Held*, that plaintiff has no cause of action. *La Société Anonyme de Remorquage à Hélice* v. *Bennetts*, 27 T. L. R. 77 (Eng., K. B. Div., Nov. 8, 1910). See NOTES, p. 397.

VOLUNTARY ASSOCIATIONS — NAME OF ORGANIZATION: RIGHT TO EXCLUSIVE USE. — The plaintiff existed for several years in Connecticut as a voluntary benefit association, and was then incorporated. The defendant was a similar organization in New York, and established branches in Connecticut. The characteristic portion of the defendant's name was the same as the plaintiff's name. Because of the resulting confusion in the public mind, and the consequent interference with the plaintiff's work, the plaintiff sued to enjoin the defendant from using this name. *Held*, that the defendant be enjoined. *Daughters of Isabella No. 1* v. *National Order of Daughters of Isabella*, 78 Atl. 333 (Conn.).

For a discussion of the principles involved, see 23 HARV. L. REV. 572.